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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,145	10/20/2000	Edmund A. Gress	0001398USU	6653

7590 06/04/2004
CHARLES N.J. RUGGIERO, ESQ.
OHLANDT, GREELEY, RUGGIERO & PERLE, LLP
ONE LANDMARK SQUARE, 10TH FLOOR
STAMFORD, CT 06901

EXAMINER

HUNTER, ALVIN A

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/693,145	Applicant(s) GRESS, EDMUND A. an	
	Examiner Alvin A. Hunter	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 21-31 and 38 is/are allowed.
 6) ☒ Claim(s) 32 and 35-37 is/are rejected.
 7) ☒ Claim(s) 33 and 34 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfield (USPN 5662332).

In regards to claim 32, Garfield discloses a method of playing a competitive card game, wherein the methods comprise the steps of:

a) providing a playing card, each card represented by a specific character and having indicia thereon, where in the indicia has one or more attacks of a specific character represented thereon, a rating of punishment that one or more statistics can inflict on an opponent,

b) each of the players sequentially selecting an attack to be performed from the card of the player and subtracting the rating of punishment of the card of the selected attack from the rating of total amount of punishment of the card of another player, said sequential selection an subtraction continuing until one of the players depletes the total amount of punishment of the other player (See Column 9, lines 30 through 37; Column 11, lines 26 through 33; Column 12, lines 13 through 24; and Column 30 lines 31 through 35).

Garfield also discloses a rating of total amount of punishment that the specific character can sustain but being on a separate accounting means (See Column 9, lines 33 through 37). One having ordinary skill in the art would have found it obvious to incorporate the total amount of punishment onto the card in order to increase the convenience of knowing the total amount of punishment. Furthermore, Garfield discloses the method of playing the applicant's game; therefore, the theme of the game is nothing more than printed matter. See Ex Parte Breslow 192 USPQ 341

GV In regards to claim 35, Garfield discloses providing a plurality of playing cards separated into a ~~into a~~ number of stacks corresponding to players playing the game (See Column 13, lines 31 through 35).

In regards to claim 36, Garfield discloses the card provided to each player being drawn from the stack of each player (See Column 13, lines 35 through 41).

In regards to claim 37, Garfield discloses the card including an image of a specific theme. One having ordinary skill in the art would have found it obvious to have an image of any type of character, in particular a wrestler, in order to provide more interest and enjoyment to the players.

Allowable Subject Matter

Claims 21-31 and 38 are allowed.

Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 21-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is 703-306-5693. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Vidovich, can be reached on 703-308-1513. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alvin A. Hunter, Jr.


GREGORY M. KOVACH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700